

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

KEVIN GRENS)	
)	
vs.)	DOCKET NO. 05-0681
)	
ILLINOIS-AMERICAN WATER COMPANY)	
Complaint as to billing/charges)	
in Lemont, Illinois)	
PEOPLE OF THE STATE OF ILLINOIS,)	
ex rel Lisa Madigan, Attorney)	
General of the State of Illinois)	
vs.)	DOCKET NO. 06-0094
ILLINOIS-AMERICAN WATER COMPANY)	
)	
Investigation of failure to provide service)	
on just and reasonable terms, and violation of)	
the Public Utilities Act and Commission rules)	
VILLAGE OF HOMER GLEN)	
vs.)	
ILLINOIS-AMERICAN WATER COMPANY)	DOCKET NO. 06-0095
)	(consolidated)
Complaint as to billing/charges in Homer Glen,)	
Illinois)	

**REPLY BRIEF
OF THE PEOPLE OF THE STATE OF ILLINOIS**

January 12, 2007

PEOPLE OF THE STATE OF ILLINOIS

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The People of the State of Illinois, by Lisa Madigan, Attorney General, submit this Reply Brief in support of their Complaint against Illinois American Water Company (IAWC).

Although the Company has offered to take several steps to address the problems raised in the People's complaint (see IAWC Ex. 4.1), these steps are insufficient to address the full scope of the problems identified in the record. Notwithstanding the steps IAWC has described in its Initial Brief, the Order in this docket should hold IAWC accountable by: (1) identifying the rules IAWC has violated; (2) directing IAWC to comply with the rules by taking specified actions, such as reporting the results of the hydrant and valve inspections in all Districts; (3) ordering an independent audit of IAWC's meter exchange refunds as well as of its statewide metering and billing practices; and (4) assessing fines under section 5-202 of the PUA.

I. The People Have Met Their Burden of Proof to Show That IAWC Violated Commission Rules.

A. The standard of review of the evidence is the preponderance of the evidence.

IAWC correctly notes that the complainants bear the burden of proof in complaints brought before the Commission. The complainant needs to prove the facts of its complaint by a "preponderance of the evidence." 220 ILCS 5/10-101; 5 ILCS 100/10-15. Preponderance of the evidence means that the fact at issue is rendered more likely than not to be true. People v. Houar, 365 Ill. App.3d 682, 686 (2d Dist. 2006)(citing Lindsey v. Board of Education, 354 Ill.App.3d 971, 986 (2004)).

In its Initial Brief, the Company focuses on its efforts to address the problems identified in the record. In proving their case, however, Company's actions in response to the alleged violations are not necessarily relevant. Rather, the complainants must prove the truth of their

allegations: that IAWC violated various Commission rules. The record shows that they have in fact met that burden.

B. The evidence supports a finding that IAWC committed several violations of Commission rules.

IAWC's Initial Brief discusses at some length the actions it has taken to address the issues raised in this docket. However, the remedial action taken by the Company does not negate the fact that it committed several violations of Commission rules, requiring the extensive remedial action they identify in their Initial Brief.

In the People's Initial Brief and in Homer Glen's Initial Brief several violations of Commission rules are identified. Although the Company has addressed many of the violations, the record shows -- and IAWC's Initial Brief does not refute -- that the following rules were violated by IAWC:

1. Periodic Meter Inspections and Test - Rule 600.340 (People's Initial Brief at 4-7).

IAWC admitted that the meters in its Chicago Metro area had not been inspected and tested in compliance with Commission rules when it acquired the service territory, and that the service area will not be fully compliant with the Commission's meter testing and accuracy rules until 2010. IAWC Ini. Br. at 13. Further, the limited Staff investigation demonstrated that of the three areas reviewed, one showed that 30 or 75 meters (in Champaign) were in service for greater than 15 years and 34 of 75 meters were not tested as required. Staff Ex. 1.0 at 18. The record shows that IAWC is not in compliance with Section 600.340's meter testing and maintenance requirements. Accordingly, the People have proved by a preponderance of the evidence the allegations in paragraph 28 of their Amended Complaint.

2. Maintaining Meter Accuracy - Rule 600.310 (People's Initial Brief at 7-8).

IAWC also admitted that many of the odometer meters in its Chicago Metro area were not accurately recording usage. IAWC Ini. Br. at 11. The company's own records confirmed the inaccuracy of older meters, as shown in [AG] Ruckman Cross Exhibit 12, which revealed that over 50% of the one thousand meters it tested did not meet the accuracy standards for meters contained in the rule. This violation of Commission accuracy rules harms consumers by exposing them to back-billing and by exposing them to higher unaccounted-for-water charges or rates. It can also lead to rate hikes, if the Company seeks to increase revenues due to the loss of revenues caused by under-recording meters. The People have proved by a preponderance of the evidence the allegations in paragraph 28 of their Amended Complaint.

3. Hydrant and Valve Testing - Rule 600.240 (People's Initial Brief at 29-31).

The evidence showed substantial lapses in compliance with the hydrant and valve testing requirements of the Commission's rules from the date that IAWC acquired the Chicago Metro service area in 2002. IAWC Ini. Br. at 8. Although IAWC suggests it designed a program to address the problem in 2003, all hydrants were not inspected until 2006, when IAWC represents that it succeeded in inspecting all of its hydrants and valves. *Id.* at 13-14, 26. IAWC has not indicated that it has inspected the valves on its system, which control the flow of water to the hydrants and to other parts of the distribution system. See *id.* The gap in time during which hydrants went uninspected, and the apparent lack of inspections of the valves, are not mere technical violations—several fire departments identified inoperable hydrants, including at the scene of two fires. See AG/HG Ex. 1.7. IAWC's success in inspecting all hydrants and valves this year does not excuse past failures. The People have proved by a preponderance of the

evidence the allegations in paragraph 38 of their Amended Complaint.

4. Consumer Protections and Back-Billing - Section 8-303 of the PUA, Rules 280.80, 280.100, 600.260 (People's Initial Brief at 9-13, 19-23, 24-27).

IAWC admitted that when it found that the odometer meters had under-registered usage, it did not know what portion of that usage was for what period of time. IAWC Ini. Br. at 17. As a result, prior to September, 2005 when IAWC stopped back-billing for odometer meter replacements, IAWC violated the twelve month limitation on back-billing. Further, the back-billing rule requires that consumers be given the option to pay back the previously unbilled amounts at least over the same period they accrued. Consumers were not given this option when they received the back-bills, and were not informed of the reasons for the bill spikes.

In addition, the Company failed to reasonably monitor consecutive estimates and zero usage bills, so that consumers could receive bills based on actual usage. IAWC's citation of a tariff provision in some of its service territories that it can estimate bills if it cannot read them "for any reason" contradicts Section 8-303 of the PUA as well as Commission rules, and does not provide an excuse for lax billing oversight. IAWC Ini. Br. at 42. IAWC's Initial Brief does not contradict the evidence cited in the People's and Homer Glen's Initial Briefs showing that customers received back-billing, and were not afforded the rights contained in Rules 280.80, 280.100 and 600.260.

The People have proved by a preponderance of the evidence the allegations in paragraphs 29-30 and 31-32 of their Amended Complaint.

5. Responses to Consumer Complaints - Rule 280.160 (People's Initial Brief at 21-23).

IAWC argues that the accounts of customers' contacts with its customer service

representatives should be disregarded because its internal customer service surveys show that consumers are satisfied with IAWC's service. IAWC Ini. Br. at 55-57. IAWC's argument ignores the fact that its customer service surveys cover a national system of which Illinois is only 9%, and even its Central region includes several states. Tr. at 445-46 (Nov. 1, 2006). Complaints by Illinois consumers could easily be subsumed in the larger group and their concerns lost.

The direct evidence of customer complaints is compelling. Consumers repeatedly reported that their complaints were not investigated as Rule 280.160 requires, that their efforts to get answers from the Call Handlers who answered their calls were fruitless, and that they were subject to collection and shut-off efforts before their concerns were addressed. (See People's Initial Brief at 21-22 & Homer Glen's Initial Brief at 8-16.) Although IAWC's later efforts to establish a Chicago Metro desk to address problems local to Illinois might have improved consumers' experience, the violation of Rule 280.160 preceded and later required the establishment of that desk so that Illinois-specific rules would be complied with.

The People have proved by a preponderance of the evidence the allegations in paragraphs 29, 33-34 of their Amended Complaint.

6. Incomplete Bill Information - Rule 600.160 (People's Initial Brief at 23).

Rule 600.160 contains billing requirements. IAWC stated in its Initial Brief that it was revamping its bill to comply with the need to show all "principal" rates, and to show the time period the bill covers if it is a back-bill. IAWC Ini. Br. at 21. The deficiencies in the bills customers received for several constitute violations of the Commission's rules irrespective of IAWC's future efforts to correct them. Rules are to be complied with even in the absence of an

enforcement action, but in this case it was only consumer complaints that lead to efforts at compliance.

The People have proved by a preponderance of the evidence the allegations in paragraphs 31-32 of their Amended Complaint.

7. Lack of a Consumer Information Booklet - Rule 280.200 (People's Initial Brief at 28).

The Commission's rules direct utilities to provide a "customer information booklet" to all applicants for service. Although IAWC admits that it has not distributed such a booklet, it argues that the information is available on the internet and in bill messages. IAWC Ini. Br. at 21-22. IAWC also asserts that it is still preparing such a booklet, along with the customer Bill of Rights from Section 8-306 of the PUA. Id. Notwithstanding that consumers brought this issue to the Company's attention close to a year ago, it is still not in compliance with the rule.

The People have proved by a preponderance of the evidence the allegations in paragraph 36 of their Amended Complaint.

8. Failure to Implement Water Conservation (People's Initial Brief at 18).

IAWC indicated in its Initial Brief that *in 2006* it informed its customers about water restrictions to conserve Lake Michigan water. IAWC Ini. Br. at 22. However, in 2005, when Illinois consumers faced drought conditions, they were not informed of water restrictions despite the existence of such restrictions in IAWC's tariffs and the need to conserve Lake Michigan water. IAWC's failure to communicate water restrictions to consumers in a reliable and consistent manner was a violation of its obligation under its tariff to conserve Lake Michigan water, and cost consumers thousands of dollars.

The People have proved by a preponderance of the evidence the allegations in paragraph 30 of their Amended Complaint.

C. The Commission Should Hold IAWC Responsible for Rule Violations Notwithstanding Later Remedial Action.

The evidence has established that the above violations of Commission rules and of the Public Utilities Act took place between the period that IAWC purchased the Chicago Metro service area and 2006, when IAWC took steps to address these problems. The People request that the Commission conclude that IAWC violated its rules as specified above, notwithstanding the post-hoc attempts to correct the deficiencies.

The Commission should not ignore the fact that these violations occurred. To do so would send the message to utilities that the Commission rules are merely advisory, and that violations are acceptable, so long as steps are taken to address them after the violations have come to public attention.

II. In Light Of The Company's Representation That It Inspected All Hydrants In Illinois In 2006, The Commission Should Require IAWC To File The Hydrant Inspection Report Now, and Not Wait Another Year.

Notwithstanding past failures to inspect hydrants and valves, IAWC stated in its Initial Brief that it inspected all hydrants by year end 2006. IAWC Ini. Br. at 13-14, 26. Yet, it suggests that it will comply with a Staff recommendation that it complete a hydrant and valve inspection, of only the Champaign and Chicago Metro districts, one year from the entry of an order in this docket. *Id.* at 29. The Commission order should recognize the inspections that have been done, and not accept any delay in addressing an issue as important as hydrant and valve maintenance.

Assuming that IAWC has completed the hydrant inspection as it has indicated, the Commission should move up the date for the Company to file its report of its inspections to within 30 days of the Order in this docket. There is no reason to wait another year to receive the report detailing the inspection, identifying individual hydrants and (to the extent done) valves by number, maintenance performed, problems found, and any corrective action taken. See id. at 29. This report is vital to assure the Commission and the public that the inspections have both taken place, and been effective.

Further, it is inappropriate to limit the required inspections and reports to two districts, as Staff suggested, and IAWC accepted. Fire departments and consumers in all of IAWC's service territory are entitled to the assurance that IAWC is annually inspecting and properly maintaining its hydrants and valves, as required by Rule 600.240.¹ The Staff witness only had the resources to do a partial review of IAWC's hydrant and valve records. Tr. at 535 (Nov. 1, 1006). However, two of the three districts reviewed showed significant deficiencies. This should lead the Commission to require inspections and detailed reporting for all districts – not just for of the three districts in which significant deficiencies were found.

Although IAWC's commitment to hire 38 more employees to address hydrant, valve, and meter issues is welcome, as is its inspection of hydrants in 2006, the Commission should treat the past failure to conduct annual hydrant inspections, the failure to inspect all valves to date,

¹ Rule 600.240 provides: "Each utility shall establish a valve and hydrant inspection program. Valves and hydrants shall be kept in good operating condition and *should be inspected at least annually*. Valves and hydrants found to be inoperable shall be repaired or replaced. Valve covers shall be maintained at grade level and not paved over. Each inspection and all maintenance performed shall be properly noted on the valve or hydrant record card. 83 Ill. Admin. Code 600.240 (emphasis added).

and the failure to maintain adequate maintenance records as serious public safety issues. A comprehensive investigation of IAWC's entire system of hydrants and valves is necessary and should be mandated in the Order in this docket to assure future compliance with Rule 600.240.

III. An Independent Audit Of IAWC's Meter Replacement Refunds Is Necessary To Confirm That Consumers Were Properly Credited For Back-Billing.

IAWC asserts that it stopped back-billing customers when odometer meters were replaced after September, 2005, and that it refunded the amounts back-billed. IAWC Ini. Br. at 18. Although it was appropriate to refund the amount back-billed, it is not reasonable to expect the public or the Commission to accept IAWC's self-audit. The many steps in the self-audit that IAWC describes in its Brief can only be assessed by an independent party with full access to the same data used by IAWC. See IAWC Ini. Br. at 18. It is not reasonable to expect that an analyst without full access to IAWC's systems could recreate IAWC's entire billing pool through discovery requests. Indeed, one of the challenges in this docket was the need to obtain billing data from the Company in a form that was useful. See People's Ini. Br. at 13-17.

IV. A Review Of IAWC's Billing Practices Concerning Consecutive Zero Usage Bills, Consecutive Estimated Bills, And Usage Spikes Is Necessary To Protect Consumers From Unwarranted Back-Billing.

IAWC's position in its Initial Brief and throughout this docket has been that the consumer complaints that gave rise to this case were based solely on back-billing related to odometer meter replacement and the drought of 2005. However, many of the bill spike complaints that were identified in the record were not explained by the odometer meter replacement. Mr. Rubin identified other sources of back-billing.

The evidence showed that there were situations where consumer bills showed

consecutive months of zero usage, consecutive estimated usage, and bill spikes, and that these billing anomalies could lead to significant back-billing. See, e.g., AG/HG Ex. 1.0 at 19, 26. The PUA and Commission rules are based on the premise that water usage will be measured on a regular basis.² However, as discussed in the People’s Initial Brief at 24-27, failure to track these anomalies frustrates that policy and deprives consumers of the information they need to manage their usage and their bills.

IAWC claims that it has implemented practices to address “higher than historical” billing, consecutive estimates, and consecutive zero usage. IAWC Ini. Br. at 22-23. Essentially, these actions are little more than the investigation of such billing anomalies, which IAWC should have been doing if it were complying with its existing policies. AG/HG Ex. 2.0 at 17 & Ex. 2.6 (proprietary). The Commission cannot take IAWC’s word that it will conform to best practices, particularly in light of the many billing anomalies identified by Mr. Rubin. See, e.g., AG/HG Ex. 1.5, 1.6, 1.10, 1.12 and 2.2. The Commission should subject IAWC’s billing practices to an outside audit to ensure that best practices are in fact being implemented.

V. The Order In This Docket Should Make Clear That IAWC Cannot Back-Bill Any Customers In Chicago Metro When Outdated Odometer Meters Are Replaced.

In its Initial Brief, IAWC refers to its decision to stop back-billing customers whose odometer meters are replaced. See, e.g., IAWC Ini. Br. at 17, 26, 30. IAWC asserts that it voluntarily stopped back-billing those customers in September, 2005, and it appears that IAWC does not intend to back-bill any customers in the future. The Commission should be clear in its Order that IAWC will not charge consumers past, unbilled usage when odometer meters are

² See 220 ILCS 5/8-303 (public policy “to eliminate to the fullest extent practicable consecutive

replaced. This is appropriate to confirm IAWC's pledge to discontinue back-billing and because IAWC has admitted that it cannot determine the period over which the unbilled usage accrued.

VI. The Commission Has The Authority To Assess Penalties For Violations Of Commission Rules.

IAWC argues that the Commission should not impose administrative penalties on it because it has not received "notice" under Section 5-202 of the PUA and because it has fully addressed the issues raised in the complaint. IAWC Ini. Br. at 59. As discussed in the People's Initial Brief at 12, IAWC received appropriate notice of the violations alleged by complainants. There is little more a party or the Commission can do to provide a respondent with notice and an opportunity to be heard than to identify violations in a complaint and afford the respondent the opportunity to respond with discovery, testimony, cross-examination, and briefs.

The efforts IAWC has made to address the violations identified in the Complaints do not undo the fact that violations occurred. Although the Commission may choose to impose less than the maximum penalty, an administrative penalty for violating public safety rules (hydrants and valve inspections and maintenance), violating metering and back billing rules, and violating other consumer protection rules, as laid out above, is appropriate.

VII. IAWC's Response to Kevin Grens' Complaint Do Not Undermine The Need For A Review Of Public And Private System Costs.

In response to the complaint brought by consumer Kevin Grens, which alleged that IAWC's rates are too high when compared to equivalent, neighboring public water systems,

estimated bills); 83 Ill. Admin. Code 600.160 (requirements for metered bills).

IAWC argues that its rates were approved by the Commission in Docket 02-0690 and that no further inquiry into the justness and reasonableness of its rates is warranted. IAWC Ini. Br. at 67-68. Although it is true that IAWC's current rates are based on rates set by the Commission, all rates charged by public utilities are either set by the Commission or approved by the Commission based on a utility's tariff filings. If Commission approval prevented all further review of rates, there could never be any consumer challenge to rate levels, and the Commission would become, in effect, a shield protecting the utility from consumer inquiry.

It is true that the IAWC's current rates are considered valid until they are changed. However, that does not mean that the Commission, its Staff, or a consumer cannot review the bases for those rates to determine whether they are based on expenses that are, upon examination, unreasonable or unjustified. Mr. Grens simply asked for this kind of a review, based on the compelling fact (not considered in the rate case) that neighboring systems provide service for half the cost.

IAWC also argues that the public systems to which Mr. Grens compares IAWC "rely on tax revenues." IAWC Ini. Br. at 68-69. IAWC witness Fredrick Ruckman, who initially testified that some public water system costs could be subsidized by property taxes, sales taxes, and utility taxes, Tr. at 195 (Oct. 31, 2006), later admitted that he had no personal knowledge of whether public water systems in northeast Illinois, or the systems Mr. Grens cited, in fact receive tax revenues to subsidize their operations. Tr. at 295-296 (Oct 31, 2006). His statement suggesting that there were public funds used for water service in Tinely Park were stricken as hearsay, as they were based solely on a casual conversation at a public meeting. Id. By contrast, Mr. Grens testified at transcript 326-328 (Oct. 31, 2006) and presented Ruckman Cross

Exhibit 10 to affirmatively show that Woodridge, whose rates are used as a point of comparison, does not use tax dollars for its water system, but is operated as an “enterprise.”

IAWC has not refuted the need, logic, or wisdom of examining IAWC’s Chicago Metro expenses and rates in comparison to the expenses and rates of neighboring public systems. The People request that the Commission open a docket to examine the costs of both IAWC and publicly operated utilities to determine why IAWC’s rates, and its underlying costs, are so much higher than neighboring systems that also deliver Lake Michigan water.

VIII. Conclusion

The People of the State of Illinois request that the Commission issue an Order containing a clear statement identifying IAWC’s violations of Commission rules and the PUA, the steps necessary to remedy them as stated above and in the People’s Initial Brief, and a provision for penalties.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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